

MEMORANDUM

To: Parties to PSB Docket No. 7466 and EEU E-mail Service List

From: Susan M. Hudson, Clerk of the Board

Re: Vermont Energy Investment Corporation Subcontractor Agreements

Date: April 5, 2010

On February 5, 2010, the Public Service Board ("Board") issued a memorandum requesting comments from interested persons on the impact of the "Non-Compete" clause included in Vermont Energy Investment Corporation's subcontractor agreements under its contract with the Board to serve as the statewide Energy Efficiency Utility ("EEU"). The Board expressed concern related to the potential impacts of this contract provision on the competitive environment for energy service providers within the State of Vermont, both currently and since the inception of the EEU in 2000.

The Board also sought comments on this issue from the parties to Docket 7466¹ on the implications, if any, of the "Non-Compete" clause on the issues in this docket, including the issues addressed in the Board's Order of November 24, 2009. In this docket, the Board will conduct an Initial Overall Performance Assessment ("OPA") of VEIC. The purpose of the Initial OPA is to evaluate the current providers' effectiveness and determine whether, in the case of VEIC, a competitive solicitation is warranted.

In its initial comments, filed on February 16, 2010, VEIC stated that it determined that the "Non-Compete" clause is a "holdover from many years ago that is not appropriate or necessary." VEIC also indicated that the clause would no longer be included in its subcontract agreements.

On February 17, 2010, Green Mountain Power Corporation ("GMP") filed comments indicating that it would like VEIC to address the rationale for the stringency of the "Non-Compete" clause, and whether the clause should remain in its subcontract

¹In its November 24 Order, the Board altered the structure model of the EEU from a contract-based model to an Order of Appointment model as authorized by 30 V.S.A. § 209(d)(5).

agreement as currently written. GMP expressed three concerns related to the language of the clause: (1) the continued applicability of the terms of the clause if VEIC were granted the Order of Appointment; (2) the impact of the clause on businesses that provide non-electric efficiency services as the EEU expands into these markets; and (3) the effect on the ability of a new employer of a former VEIC employee to bid against VEIC. GMP also stated that "it does not believe that there is any policy reason for such a provision that serves to stifle competition."

No other entity filed initial comments.

In its reply comments dated February 23, 2010, VEIC indicated that it considers the "Non-Compete" clause to no longer be in effect for existing and previous subcontractor agreements and that it will not seek to enforce this contract clause. VEIC stated that it will notify all subcontractors that had signed agreements since 2006.

The Department of Public Service ("Department") filed comments on February 23, 2010. The Department stated that "VEIC's initial decision to discontinue use of the clause in future contracts was a good first step but the Department was concerned about the impact of the clause on current and former subcontractors." The Department explained that its concerns were fully addressed by VEIC's reply comments.

The Board has determined that no further action is necessary at this time. However, the Board has asked me to inform you that the potential historic impacts of the "Non-Compete" clause can be considered during VEIC's Initial OPA.